

CONTRACT #2
RFS # 339.17-335
FA # Pending

Mental Health &
Developmental Disabilities
Memphis Mental Health
Institute

VENDOR:
University of Tennessee



**STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES**

Cordell Hull Building - 3rd Floor
425 5th Avenue North
Nashville, Tennessee 37243

RECEIVED

August 22, 2008

AUG 26 2008

FISCAL REVIEW

MEMORANDUM TO: Fiscal Review Committee

RE: Non-Competitive Contract Request
for Pharmacy Services at Memphis Mental Health Institute
(MMHI) – RFS 339.17-335-09

FROM: Linda Parker, Director *Linda Parker*
Program Support

This is a non-competitive contract request for a five (5) year contract with the University of Tennessee at Memphis, School of Pharmacy for the services of a Pharmacist. This Pharmacist will work 20 hours per week at MMHI. The maximum liability for this five (5) year contract will be \$351,200.

The original request for this non competitive contract was received via e-mail from Jeanne West-Freeman, Ph.D. the Chief Officer at MMHI on August 15. The actual request form and other supporting documents were received August 18 via e-mail from Linda White, the Fiscal Director at MMHI. It is my understanding that the State position for a pharmacist at MMHI has been vacant for quite some time and efforts to fill it have been futile. Due to the inability to hire a state position, MMHI staff have been negotiating with the University of Memphis, School of Pharmacy to acquire the services of a pharmacist, and only recently reached an agreement.

Since a draft contract is required to be submitted to the Fiscal Review Committee, the internal review process for this document took several days. Attached is the Non Competitive Contract Request, Contract Summary Sheet with supporting documentation for the dollar amount of the contract, and a draft Contract.

We apologize for the delay and will appreciate your favorable consideration. If you have questions or if I may provide additional information, please let me know.

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	339.17-335-09	
2) State Agency Name :	TDMHDD-MEMPHIS MENTAL HEALTH INSTITUTE	
3) Service Caption :	PHARMACIST SERVICES	
4) Proposed Contractor :	UNIVERSITY OF TENNESSEE	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	October 14, 2008	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	June 30, 2013	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$351,200	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :	<p>Pharmacist services through use of the University of Tennessee (UT) faculty employee on a part-time basis. The cost of the Pharmacist will be a shared expense by Memphis Mental Health Institute and the University of Tennessee. MMHI would reimburse UT for 20 hours per week for Pharmacist services and any related travel expenses that are incurred while performing duties for MMHI.</p>	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	<p>Memphis Mental Health Institute (MMHI) has been trying unsuccessfully for the last two (2) years to fill the clinical staff Pharmacist position. University of Tennessee (UT) is the closest medical school in the West Tennessee region that can provide the Pharmacist services needed at MMHI as well provide the additional exposure to the health science students which would enhance the teaching aspect of the hospital. Contracting with a Tennessee medical school for resident programs creates monetary savings for TDMH in the cost of pharmacy services coverage over state or contract employees. Presently we only have one (1) full time Pharmacy Director on staff and a retired employee that works on a limited basis.</p>	
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :	<p>Previously, the Pharmacist position has been budgeted as a full-time state position.</p>	
12) Name & Address of the Proposed Contractor's Principal Owner(s) : (<u>not</u> required if proposed contractor is a state education institution)	<p>N/A, UT is state education institution.</p>	

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

UT has been providing Residential Pharmacist and staff Pharmacist for over thirty (30) years.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

MMHI has utilized the services from UT for many years when needed since it is the only medical school in West Tennessee that can provide the needed pharmacy services for our service recipients.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

UT is the only medical school in West Tennessee that can provide the pharmacy services needed at MMHI as well as offering a teaching environment for UT residents. This arrangement has been beneficial to both state agencies in the past.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



Agency Head Signature



Date

CONTRACT SUMMARY SHEET

021908

RFS #				Contract #			
339.17-335				ED			
State Agency				State Agency Division			
TDMHDD				MEMPHIS MENTAL HEALTH INSTITUTE			
Contractor Name				Contractor ID # (FEIN or SSN)			
UNIVERSITY OF TENNESSEE				<input checked="" type="checkbox"/> C- or <input type="checkbox"/> V- 62-6001636-R3			
Service Description							
PHARMACIST SERVICES							
Contract BEGIN Date		Contract END Date		Subrecipient or Vendor?		CFDA #	
10/14/2008		6/30/2013					
Mark Each TRUE Statement							
<input type="checkbox"/> Contractor is on STARS				<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
Allotment Code		Cost Center		Object Code		Fund	
339.17		303510		25Z407		11	
Funding Grant Code		Funding Subgrant Code					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount		
2009				\$ 46,950.00	\$ 46,950.00		
2010				\$ 72,810.00	\$ 72,810.00		
2011				\$ 74,940.00	\$ 74,940.00		
2012				\$ 77,120.00	\$ 77,120.00		
2013				\$ 79,380.00	\$ 79,380.00		
					\$ -		
TOTAL:	\$ -	\$ -	\$ -	\$ 351,200.00	\$ 351,200.00		
— COMPLETE FOR AMENDMENTS ONLY —				State Agency Fiscal Contact & Telephone #			
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	GENE WOOD (615) 532-6676				
			State Agency Budget Officer Approval				
			Funding Certification (certification, required by T.C.A. § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)				
TOTAL:	\$ -	\$ -					
End Date							
Contractor Ownership (complete for ALL base contracts— N/A to amendments or delegated authorities)							
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> Government			
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> NOT Minority/Disadvantaged	<input type="checkbox"/> Other			
Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)							
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation*	<input type="checkbox"/> Alternative Competitive Method*					
<input checked="" type="checkbox"/> Non-Competitive Negotiation*	<input type="checkbox"/> Negotiation w/ Government (ID,GG,GU)	<input type="checkbox"/> Other *					
* Procurement Process Summary (complete for Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)							

This is a non competitive negotiation with a State of Tennessee University, School of Pharmacy. A Non-Competitive Contract Request has been submitted for review and approval.

UT PHARMACIST REQUEST FOR NON-COMPET CONTRACT

RFS #339.17-335

8/14/2008

CALCULATIONS-FY2009 THRU FY2013 (COORDINATED W/UT PHARM BUS MGR)

	#HRS/MO	ORG RT/HR (INCL BENEFITS)							
PHARMACIST	80	\$	66.10						
FULL TIME				2080 # HRS/YR					
FY	# MONTHS	APPROX FT HRS/YR	RT/HR	ANNUAL SAL-UT	MMHI CONTRACT EST	TRAVEL	TOTAL		
FY2009	8.5	2080	\$ 66.10	\$ 137,488.00	\$ 44,948.00	\$ 2,000.00	\$ 46,948.00		
FY2010	12	2080	\$ 68.08	\$ 141,612.64	\$ 70,806.32	\$ 2,000.00	\$ 72,806.32		
FY2011	12	2080	\$ 70.13	\$ 145,861.02	\$ 72,930.51	\$ 2,000.00	\$ 74,930.51		
FY2012	12	2080	\$ 72.23	\$ 150,236.85	\$ 75,118.42	\$ 2,000.00	\$ 77,118.42		
FY2013	12	2080	\$ 74.40	\$ 154,743.96	\$ 77,371.98	\$ 2,000.00	\$ 79,371.98		
TOTAL									
TOTAL (TO NEAREST 100)				\$ 729,942.46	\$ 341,175.23	\$ 10,000.00	\$ 351,175.23		
					\$ 341,200.00		\$ 351,200.00		

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
MEMPHIS MENTAL HEALTH INSTITUTE
AND
UNIVERSITY OF TENNESSEE**

This Contract, by and between the State of Tennessee, Tennessee Department of Mental Health and Developmental Disabilities, Memphis Mental Health Institute hereinafter referred to as the "State" and The University of Tennessee, hereinafter referred to as the "Contractor," is for the provision of Pharmacist services as further defined in the "SCOPE OF SERVICES."

Contractor Federal Employer Identification Number: (V626001636 R3)

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Service Definition:

One (1) Tennessee licensed Pharmacist to assist in providing Pharmacy coverage at Memphis Mental Health Institute (MMHI) on a part-time basis.

A.3. Service Recipients:

Persons admitted to MMHI who are in need of pharmacy services.

A.4. Structure:

- a. The Contractor shall provide the State with one (1) Tennessee licensed Pharmacist currently on faculty at The University of Tennessee School of Pharmacy to assist in providing pharmacy coverage to service recipients as identified in A.3.
- b. The Contractor agrees to provide one (1) mutually agreed Tennessee licensed Pharmacist for at least twenty (20) hours per week.
- c. The Contractor shall ensure that the Pharmacist provides consultant pharmacy services and other related consultant services relating to patient care.
- d. The Contractor shall ensure that the Pharmacist supervises and teaches Pharmacy students and Pharmacy Residents assigned to MMHI.
- e. The Contractor shall ensure that the Pharmacist may, on occasion, have to teach staff in the area of pharmacology as it relates to the patients at MMHI.
- f. The Contractor shall ensure that the Pharmacist also provides any related duties as assigned by the MMHI Pharmacy Director including but not limited to drug utilization reviews, medication serum level monitoring, drug regimen reviews, filling and dispensing medications, and patient counseling.
- g. The Contractor shall ensure that the Pharmacist be paid for the same holidays as full time State employees.

- h. The Contractor shall ensure that all services are provided at a standard of care which shall at least be comparable to the standards set by the Joint Commission and shall also include all pharmacy services as deemed necessary to comply with:
 - i. Joint Commission;
 - ii. MMHI Policy;
 - iii. Acute Treatment Program Procedures and Forensic Program Procedures where applicable;
 - iv. Medical and Professional Staff Bylaws of MMHI;
 - v. Tennessee Code Annotated Title 33 (Mental Health and Developmental Disabilities Law); and
 - vi. Medicare and Medicaid under age twenty-one (21) and Medicaid over age sixty-five (65) standards when applicable.
- i. The Contractor's Pharmacist providing services hereunder shall participate in all appropriate quality assurance programs set forth by the MMHI Pharmacy Director, including utilization review at MMHI.
- j. The Contractor shall ensure that the Pharmacist have a Tennessee Bureau of Investigation (TBI) full finger print background check as required by the State policy for any Contractors and their staff who are to have contact with MMHI service recipients before being allowed to work at MMHI. The cost of the full finger print background check shall be credited against the invoice amount paid to the Contractor. If a full finger print background check has been conducted in the last five (5) years by Contractor in its capacity as employer of the Pharmacist, MMHI will accept the results of such full finger print background check upon proof of same and shall not require an additional full finger print background check.
- k. The State shall not be responsible for accidents or injuries occurring during the hours the Contractor's personnel are on State property, unless directly resulting from the negligence of the State, its employees or agents. Any claims for personal injury or property damages shall be filed with the Claims Commission for the State of Tennessee, and damages recoverable shall be expressly limited to claims paid by the Tennessee Claims Commission.

A.5. Process:

- a. The Contractor's Pharmacist shall work under the supervision of the MMHI Pharmacy Director.
- b. The Contractor shall provide supporting documentation such as their annual review of the Pharmacist sent to MMHI which shall serve as evidence of performance.
- c. The average daily census (ADC) shall remain, whenever possible, at or below the capacity of MMHI.
- d. The Contractor shall ensure that the Pharmacist allocates a minimum of ninety percent (90%) of his/her effort covered by this Contract to clinical responsibilities. The remaining ten percent (10%) may be allocated to academic and research activities at UT and MMHI. The MMHI Pharmacy Director shall account for hours worked by the Pharmacist and in what capacity on a pay period log. The said ten percent (10%) time may be spent on academic and research efforts at UT if approved in advance by MMHI's Pharmacy Director. Requests for such time must be submitted by the Chair of the Department of Pharmacy at UT or his designee, describing the academic or research work being done, duration of the project, with a recommended schedule. MMHI may approve any request which does not conflict with MMHI's operational needs. This time allocation is comparable to that found in other academic/state affiliations. It shall be mutually understood that no UT service recipient care activity will occur during the hours per week covered by this Contract. It is further understood

that MMHI service recipient care activity takes priority over academic or research activity during this same time period.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on October 14, 2008 and ending on June 30, 2013. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Hundred Fifty One Thousand Two Hundred Dollars (\$351,200.00). The payment rates in Section C.3 and the Travel Compensation provided in Section C.4 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

<u>Service Description</u>	Amount (per compensable increment)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Pharmacist	\$66.10 per hour	\$68.08 per hour	\$70.13 per hour	\$72.23 per hour	\$74.40 per hour

- C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and shall not exceed Ten Thousand Dollars (\$10,000.00) during the

period of the contract. Compensation will only be paid for travel required by the State for the performance of duties outlined in the scope of services.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Memphis Mental Health Institute, 951 Court Avenue, Memphis, TN 38103

b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Tennessee Department of Mental Health and Developmental Disabilities, Memphis Mental Health Institute;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service Description for each service invoiced;
 - ii. Number of Units, Increments, or Milestones of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) for each service invoiced;
 - iv. Amount Due by Service;
 - v. Travel Compensation requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations;" and
 - vi. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. Pursuant to *Tennessee Code Annotated*, Section 9-4-604, the State is not to issue warrants for payments to persons who are in default to the State until such arrearages are paid. If applicable to the Contractor, the Contractor agrees that, should such an arrearage exist during the term of this Contract, the State shall have the right to deduct from payments due and owing to the Contractor any and all amounts as are necessary to satisfy the arrearage. Should a dispute arise concerning payments due and owing to the Contractor under this Contract, the State reserves the right to withhold said disputed amounts pending final resolution of the dispute.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other at least ninety (90) days before the effective date of termination. Should the State exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the State shall have no liability to the Contractor except for those units of service which can be effectively used by the State. The final decision as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the Tennessee Claims Commission in order to seek redress.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Any liability of the Contractor to the State and third parties for any claims, losses, or costs arising out of or related to acts performed by the Contractor under this agreement shall be governed by the Tennessee Claims Commission Act, *Tennessee Code Annotated*, Section 9-8-301, *et seq.*
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show

proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.7. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.8. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.9. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.10. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.11. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create a employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services.
- D.12. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.13. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.14. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective

party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.
The State:

Linda C. White, Fiscal Director
Memphis Mental Health Institute
951 Court Avenue
Memphis, TN 38103
Linda.White@state.tn.us
Telephone # (901) 577-1821
FAX # (901) 527-1324

The Contractor:

Shelia Cooper, Business Manager
Department of Pharmacy
University of Tennessee
Health Science Center
847 Monroe Avenue Suite 208
Memphis, TN 38163
scooper@utmem.edu
Telephone # (901) 448-6047
FAX # (901) 448-1741

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.
- E.4. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.5. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.6. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.7. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:
- NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454
- E.8. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the

Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

E.9. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

E.10. Rule 2 Compliance. The State and the Contractor shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR § 2.1 et seq.

- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Contract.
- b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the course of performance of the Contract so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and the Contractor in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 of the Confidentiality of Alcohol and Drug

Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits the State to receive such information without entering into a business associate agreement or signing another such document.

- E.11. Professional Practice. The Contractor shall assure that there is a code of conduct in place and applicable to all employees that covers, at minimum, business practices, clinical practices, and service recipient/staff interaction/fraternization. Further, Contractor's personnel shall conduct their practice in conformity with all applicable statutes, rules and regulations, and recognized ethical standards of their profession. Procedures for reporting violations of the ethical standards shall be developed and communicated to staff upon hire and annually thereafter, which shall include a non-reprisal approach for persons reporting suspected violations, as well as a description of possible sanctions for violating the standards. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct may be cause for termination of this Contract.

IN WITNESS WHEREOF:

UNIVERSITY OF TENNESSEE:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES :

VIRGINIA T. BETTS, MSN, JD, RN, FAAN
COMMISSIONER

DATE

APPROVED:

M. D. GOETZ, JR., COMMISSIONER

DATE

DEPARTMENT OF FINANCE AND ADMINISTRATION

DEBORAH E. STORY, COMMISSIONER
DEPARTMENT OF HUMAN RESOURCES

DATE

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE